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10 Attorneys for Defendant

BANK OF AMERICA CORPORATION

12 **UNITED STATES DISTRICT COURT**

13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 MARK POTTER,

15 Plaintiff,

16 vs.

17 BANK OF AMERICA
CORPORATION; and DOES 1 TO 5,

18 Defendants.

Case No.

'14CV0004 DMS RBB

**NOTICE OF REMOVAL TO
FEDERAL COURT**

[FEDERAL QUESTION]

Action Filed: November 25, 2013

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**
2 **THE SOUTHERN DISTRICT OF CALIFORNIA, PLAINTIFF,**
3 **PLAINTIFF'S COUNSEL OF RECORD, AND ALL OTHER INTERESTED**
4 **PARTIES:**

5 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1441 and 1446,
6 Defendant Bank of America Corporation ("Defendant") hereby removes the above-
7 captioned action from the Superior Court of the State of California, County of San
8 Diego, to the United States District Court, Southern District of California.
9 Defendant is entitled to removal pursuant to 28 U.S.C. § 1331, based on federal
10 question jurisdiction, as follows:

11 1. Plaintiff Mark Potter filed a civil action against Defendant in the San
12 Diego County Superior Court on November 25, 2013, entitled *Mark Potter v. Bank*
13 *of America Corporation*, case number 37-2013-00077124-CU-BT-NC (the "State
14 Court Action"). The Complaint asserts claims against Defendant for: 1) Negligent
15 Violation of Telephone Consumer Protection Act (47 U.S.C. § 227 *et seq.*); and
16 2) Knowing and/or Willful Violations of the Telephone Consumer Protection Act
17 (47 U.S.C. § 227 *et seq.*).

18 2. This notice of removal is timely under 28 U.S.C. § 1446(b) and Fed. R.
19 Civ. P. 6(a) because the Complaint was served on December 3, 2013. This notice of
20 removal is filed on January 2, 2014, which is 30 days from the first date of service
21 of a copy of the initial Complaint on any defendant.

22 3. Defendant has not yet filed an answer or otherwise responded to
23 Plaintiff's Complaint in the State Court Action.

24 4. Removal to this district is proper because this is the district which
25 embraces the county in which Plaintiff filed the State Court Action. 28 U.S.C.
26 § 1441(a).

27 5. This Court has subject matter jurisdiction over this action pursuant to
28 28 U.S.C. § 1331. The Complaint alleges claims for relief and arises under the

1 following federal statute: the Telephone Consumer Protection Act (47 U.S.C. § 227
2 *et seq.*).

3 6. Although the Complaint does not allege any claims other than those
4 arising under the Telephone Consumer Protection Act, this Court would have
5 supplemental jurisdiction over all other claims that might have been asserted by
6 Plaintiffs pursuant to 28 U.S.C. § 1367(a) and 28 U.S.C. § 1441(c).

7 7. Venue in this Court is proper pursuant to 28 U.S.C. § 1441(a) because
8 this is the district that embraces the county in which Plaintiffs filed the State Court
9 Action.

10 8. Pursuant to 28 U.S.C. § 1446(d), Defendant is filing this notice of
11 removal with this Court, will provide written notice of the removal of this action to
12 Plaintiffs and all counsel, and notice thereof will be filed with the Clerk of the San
13 Diego County Superior Court.

14 9. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and
15 orders served upon or by Defendant in the State Court Action, including Summons
16 and Complaint, are attached hereto as **Exhibit 1**.

17 **WHEREFORE**, Defendant prays that the State Court Action be removed
18 from the state court to this Court and that this Court assume jurisdiction over the
19 action and determine it on the merits.

20 DATED: January 2, 2014

SEVERSON & WERSON
A Professional Corporation

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23 By: /s/Matthew A. Garfinkle
24 Matthew A. Garfinkle

25 Attorneys for Defendant BANK OF AMERICA
26 CORPORATION
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